IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2746 of 2006
to
FIRST APPEAL No. 2762 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
BHAVUBHA POPATSANG & 1 - Respondent(s)

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Appearance :

FIRST APPEAL NO.2746 to FIRST APPEAL NO.2750 of 2006

MR SS SHAH, GOVERNMENT PLEADER for Appellant
FIRST APPEAL NO.2751 to FIRST APPEAL NO. 2754 of 2006

MS TANUJA N.KACHCHHI, AGP for Appellant
FIRST APPEAL NO.2755 to FIRST APPEAL NO.2758 of 2006

MS KRINA P.CALLA, AGP for Appellant
FIRST APPEAL NO.2759 to FIRST APPEAL NO.2762 of 2006

MR KRUNAL D.PANDYA, AGP for Appellant
FIRST APPEAL NO.2746 to FIRST APPEAL NO.2762 of 2006
MR GM AMIN for Respondents-Claimants
Rule served for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 13/12/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated November 29, 2003, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura in Land Acquisition Case No.572 of 1995 to Land Acquisition Case No.586 of 1995, Land Acquisition Case No.533 of 1995 and Land Acquisition Case No.534 of 1995, by which the claimants are awarded additional compensation at the rate of Rs.21.50/- per sq.mt. for their acquired lands over and above the compensation paid to them by the Special Land Acquisition Officer at the rate of Rs.1.57 ps. per sq.mt.

for irrigated lands and Rs.1.05 ps. per sq.mt. for non-irrigated lands, by his award dated April 30, 1994.

2. The Executive Engineer, Narmada Yojana, Division No.3/2, Gandhinagar, proposed to the State Government to acquire the lands of village Kauka, Taluka: Dholka, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Kauka were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on May 1, 1992. The land owners were thereafter served with notices under Section 4(1) of the Act. They opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said

report, the State Government was satisfied that the lands of village Kauka which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on September 22, 1992. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated April 30, 1994, offered compensation to the claimants at the rate of Rs.1.57 ps. per sq.mt. for irrigated lands and Rs.1.05 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they filed applications

under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R) where they were registered as Land Acquisition Case No.572 of 1995 to Land Acquisition Case No.586 of 1995, Land Acquisition Case No.533 of 1995 and Land Acquisition Case No.534 of 1995.

3. On behalf of the claimants, witness Mahipatsinh Keshubhai Vaghela was examined at Ex.27. After stating that the lands acquired were highly fertile, the witness claimed that each claimant was earning net income of Rs.30,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces such as Millet, Tuver, etc. The witness further stated that the boundaries of his village were touching that of village Paldi and that the last survey number of village Kauka was adjoining to Block number acquired from his village for Narmada Canal.

The witness also stated that the lands of village Paldi and the lands of his village, which were acquired, were similar in all respects including the fertility. The witness further mentioned that the claimants were able to grow some crops on the lands acquired as were being raised on the lands of village Paldi which were acquired previously. In support of claim of the claimants for enhanced compensation, the witness produced previous award of the Reference Court relating to the lands of village Paldi at Ex.26. According to this witness, village Paldi was situated at a distance of two kilometers from Dholka-Bhavnagar Highway and was fully developed.

4. This witness was cross-examined on behalf of the appellants but nothing substantial could be elicited nor the claim made by the witness that the lands which were acquired from village Paldi and the the lands which were acquired in the instant case were similar in all respects could be demonstrated to be untrue.

5. It may be mentioned that no witness was examined by the appellants to refute the claim advanced by the witness for the claimants but some documents such as award of the Special Land Acquisition Officer rendered in the instant case against which References were sought was produced at Ex.31, extract from the relevant register indicating the price of the lands sold during the five years was produced at Ex.32, a copy of the Anavaripatrak was produced at Ex.33, and the abstract of 8A Patrak at Ex.34.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Paldi was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. After placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation at

the rate of Rs.21.50/- per sq.mt. by common judgment and award dated November 29, 2003, giving rise to these Appeals.

7. This Court has heard Mr.S.S.Shah, learned Government Pleader for the appellants and Mr.Gopinath M.Amin, learned counsel for the claimants at length and in great detail. This Court has also considered the oral as well as documentary evidence adduced by the parties before the Reference Court.

8. The contention that the previous award of the Reference Court relating to the lands of village Paldi should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired in the instant case has no substance.

9. From the record of the case, it is evident that in support of their claim for enhanced compensation, the claimants had examined witness Mahipatsinh Keshubhai Vaghela at Ex.27. Though it was claimed by the said witness that

each claimant was earning Rs.30,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces, no evidence could be adduced to substantiate the said claim. The record does not indicate that enhanced compensation was claimed by the claimants either on the yield basis or on the basis of comparable sale instances. What was produced by the claimants in support of their claim was the previous award of the Reference Court relating to the lands of village Paldi at Ex.26. Exhibit 26, which is previous award of the Reference Court, indicates that the lands of village Paldi, Taluka: Dholka, District: Ahmedabad, were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4 of the Act in the official gazette on November 14, 1991. Therein, the Special Land Acquisition Officer, by his award dated May 19, 1992, had offered compensation to the claimants at the rate of Re.1/- per sq.mt. Feeling aggrieved by the said offer, References were

sought. Accordingly, References were made to the District Court, Ahmedabad, where they were registered as LAQ Nos.572 of 1995 to 586 of 1995. The Reference Court, in those cases, awarded additional compensation to the claimants at the rate of Rs.21.50/- per sq.mt. by judgment and award dated September 29, 2003. It is true that in cross-examination, the witness for the claimants has admitted that the distance between his village and village Paldi is five kilometers. However, the suggestion made by the appellants to the said witness that village Paldi is situated near highway is emphatically denied by the said witness. Merely because village Paldi was more developed than village Kauka, the previous award rendered by the Reference Court could not have been ignored while determining the market value of the lands acquired in the instant case, more particularly, when no evidence worth the name was adduced by the appellants. By leading cogent and convincing evidence, the claimants established that the lands which were

previously acquired from village Paldi were similar in all respects to the lands acquired in the instant case whereas no evidence could be adduced by the appellants to establish that the previous award of the Reference Court was not a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that previous award of the Reference Court in respect of similar lands and which has become final can be taken into consideration for determining the market value of the lands acquired from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Paldi for the purpose of determining the market value of the lands acquired in the instant case.

10. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court

finds that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not convince the Court to take a view different than the one which is taken by the Reference Court and therefore, the Appeals, which have no merits, deserve to be dismissed.

11. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this Judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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